IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6154 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVKARANSINH @ TEMPO LALSINH RATHOD

Versus

STATE OF GUJARAT

Appearance:
Mr.N.K.Pahwa for
M/S THAKKAR ASSOC. for Petitioner
MS HARSHA DEVANI, ld.AGP for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 06/10/2000

ORAL JUDGEMENT(Per: M.R.Calla,J)

This Special Civil Application is directed against the detention order dated 5.6.2000 passed by the Police Commissioner, Ahmedabad City whereby the petitioner was detained under Sec.3(2) of the Gujarat

Prevention of Anti Social Activities Act, 1985.

No reply to the Petition has been filed.

Grounds of detention enclosed with the detention order show that 2 Criminal Cases under Bombay Prohibition Act were registered against the petitioner on 1.4.2000 and 27.5.2000 respectively at Prohibition Station, North Zone. The petitioner is said to be a bootlegger and engaged in the business of unauthorised liquor. That the detaining authority found the petitioner to be a bootlegger and has also referred to the incidents dated 25.4.2000 and 21.4.2000, about which the deposition was made by the witnesses on 2.6.2000 and 3.6.2000 respectively and the detention order was passed on 5.6.2000. So far as two Criminal cases under the Prohibition Act are concerned, for which investigation was pending at the time when the detention order was passed, it cannot be said on that basis that the petitioner's bootlegging activity was a threat to public order. At the most it can be said to be a case of breach of law and order.

So far as the statements recorded on 2.6.2000 and 3.6.2000 with regard to the incidents dated 25.4.2000 and 21.4.2000 are concerned, it is not in dispute that the statements were verified on 4.6.2000 by the Police Commissioner, Ahmedabad City and the detention order was passed on 5.6.2000. Learned counsel for the petitioner has placed reliance on a decision of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat, reported in 1993(2) GLR 1569 in which case the proposal for detention was made on 16.10.92 and the detention order was passed on 17.10.92. In the instant case, the statements were verified on 4.6.2000 and the detention order was passed on 5.6.2000. It is, therefore, found to be a wrong exercise of power under Sec.9(2) of the Act with regard to the privilege under Sec.9(2) of the Act. In view of the law laid down by the Division Bench in the aforesaid case of Kalidas Chandubhai Kahar (Supra), the impugned detention order deserves to be quashed and set aside.

For the reasons as aforesaid, the impugned detention order dated 5.6.2000 passed by the Police Commissioner, Ahmedabad City, cannot be sustained in the eye of law and the same is hereby quashed and set aside. It is directed that the petitioner Devkarsnsinh @ Tempo Lalsinh Rathod, shall be released forthwith from Surat Jail where he is detained since 5.6.2000, in case he is not required in any other matter. This Special Civil

Application is allowed. Rule is made absolute.

(M.R.Calla,J)